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BEFORE THE ARIZONA CORPORATION  
Arizona Corporation Commission

JIM IRVIN

Chairman

TONY WEST

Commissioner

CARL J. KUNASEK

Commissioner

DOCKETED

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IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

) DOCKET NO. T-00000A-97-0238  
)  
) ELI'S RESPONSE TO U S WEST'S  
) MOTION TO RECONSIDER  
) PROCEDURAL ORDER

Electric Lightwave, Inc. ("ELI") opposes U S WEST's Motion to Reconsider Procedural Order dated April 20, 1999. As noted below, the Commission should deny U S WEST's motion and uphold the Hearing Division's April 7, 1999 order. ELI joins in AT&T's and others' response to the motion and offers the following additional reasons for denying U S WEST's motion.

**I. THE APRIL 7, 1999 PROCEDURAL ORDER SHOULD BE UPHELD BECAUSE IT IS IN EVERYONE'S BEST INTERESTS TO CONDUCT A FULL AND FAIR HEARING.**

U S WEST cites no good reason for reconsidering the April 7, 1999 Procedural Order. The purpose of this Section 271 proceeding is to develop a full and complete factual record concerning U S WEST's entry into the long distance interLATA market. Under the Telecommunications Act of 1996, the FCC "shall consult" with this Commission regarding Section 271 compliance. See 47 U.S.C. § 271(d)(1)(B). This Commission, therefore, needs to develop a full and complete factual record. The April 7 order is necessary for that to happen--only by upholding the April 7 order will the Commission develop a complete factual record, serve the public interest and fairly decide this Section 271 case.

The April 7 procedural order provides a fair and appropriate schedule for taking this case to hearing. Shortening the CLECs' time for submitting rebuttal testimony and Staff's time for

1 submitting its report will serve no purpose except to result in an incomplete factual record.

2 U S WEST's Section 271 application is several thousand pages long and took U S WEST several  
3 months to prepare. It's only fair that the Staff and CLECs have some time to develop their cases.  
4 Even under the April 7 schedule, a hearing will be conducted in less than six months from the date  
5 U S WEST filed its Section 271 application. That's much faster than other jurisdictions have  
6 addressed U S WEST Section 271 filings.  
7

8 **II. U S WEST CITES NO GOOD CAUSE FOR RECONSIDERING THE CASE**  
9 **SCHEDULE.**

10 The best way of viewing U S WEST's motion is to ask why U S WEST wants the  
11 Commission to override the Hearing Division and issue an alternative, and shorter, case schedule.  
12 U S WEST claims a shorter procedural order is necessary to prevent ELI and the other CLECs  
13 from delaying these proceedings. But U S WEST cites no evidence, facts or circumstances in  
14 support of that argument. In reality, it is U S WEST--not ELI or the other CLECs—that has  
15 already delayed these proceedings.  
16

17 U S WEST's actions in this case have been inconsistent with the Commission's procedural  
18 orders from the very outset. On January 25, 1998 U S WEST filed its "Notice of Intent to File" its  
19 Section 271 application with this Commission. On February 8, 1999, U S WEST filed its "Notice  
20 of Intent to File with FCC and Application for Verification of Section 271(c) Compliance."  
21 Neither filing was (1) U S WEST's "complete [§ 271] application," (2) contained any supporting  
22 evidence of compliance with the 14-point competitor checklist under 47 U.S.C. § 271(c)(2)(B) or  
23 (3) contained "all information" responsive to Decision No. 60218. U S WEST didn't file its full  
24 application until March 25, 1999.  
25

26 U S WEST can't blame the CLECs for this delay. Even further, U S WEST misreads the  
27 purported "90-day" requirement in Decision No. 60218. In Decision No. 60218, the Commission

1 simply opened a docket to address the underlying facts concerning U S WEST's Section 271  
2 compliance. Decision No. 60218 didn't envision a full evidentiary hearing--it focused instead on  
3 informal comment filings and workshops. Nowhere in Decision No. 60218 did the Commission  
4 impose a requirement that a full evidentiary hearing be held within 90 days.  
5

6 Thus, the April 7, 1999 scheduling order makes perfect sense. Hearing Division's schedule  
7 allows the Commission, CLECs and U S WEST to evaluate and present pertinent facts and issues.  
8 This case is very complex. Ninety days isn't an unreasonable response time. In fact, 90 days may  
9 be too short because the parties are still in the process of exchanging documents and discovery  
10 requests. U S WEST has filed more than 100 pages of objections to discovery requests and those  
11 issues probably won't be resolved for quite some time.  
12

13 **III. U S WEST'S ATTEMPTS TO REARGUE DISCOVERY ISSUES SHOULD BE**  
14 **DENIED.**

15 In its motion to reconsider, U S WEST also expends considerable effort re-urging its Data  
16 Request Nos. 22-23, 32-34, and 36. In its April 7, 1999 order, the Hearing Division denied  
17 U S WEST's motion to compel and ordered all parties to respond to the questions set forth in  
18 Attachments A and B to Decision No. 60218. The Commission should uphold that decision  
19 because U S WEST applies the wrong analytical framework to its discovery requests which are  
20 irrelevant, burdensome and beyond the scope of this Section 271 case.  
21

22 A simple review of U S WEST's data requests illustrates those points. In Data Request  
23 No. 22, for example, U S WEST asks the CLECs to identify each electronic interface it requires to  
24 provide local service in Arizona and the 13 other states in U S WEST's region. ELI responded to  
25 that data request by discussing its problems with U S WEST's IMA system and by referring to  
26 testimony, briefing and other information already supplied in the Arizona consolidated arbitration  
27

1 proceedings. (Docket Nos. U-3021-96-448, U-3245-96-448 and E-1051-96-448.) ELI provided  
2 more than enough information to meet U S WEST's Section 271 needs.

3  
4 Data concerning ELI's experience "in any of the other 13 states in U S WEST's region" is  
5 irrelevant to this proceeding. The primary issue in this docket is whether U S WEST complies  
6 with Section 271 requirements in Arizona. In fact, U S WEST made that same objection in  
7 response to some of ELI's data requests:

8  
9 U S WEST objects to each request to the extent that it requests  
10 information relating to U S WEST's activities outside the State of  
11 Arizona, on the grounds that the request is irrelevant and that it is  
12 not reasonably calculated to lead to discovery of evidence relevant  
13 to, or admissible in, this proceeding. Further, such discovery is  
14 unduly burdensome and expensive, in light of the issues in this  
15 matter, which relate only to this Commission's recommendation  
16 pertaining to U S WEST's proposed filing with the Federal  
17 Communications Commission under 47 U.S.C. § 271.

18  
19 See U S WEST's Objections to ELI's Data Requests, page 1.

20 Data Request Nos. 23, 32-33 and 36 are irrelevant, burdensome and beyond the scope of this  
21 Section 271 case. The issue in this docket revolves around U S WEST's system and CLEC access  
22 to it. ELI's internal operations and dealings are not at issue.

23  
24 U S WEST's data requests and its motion are nothing more than another attempt to place  
25 the burden on others to show that U S WEST should not enter the long-distance market.

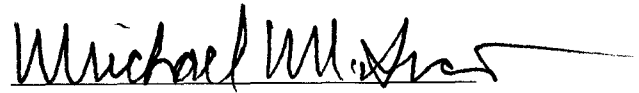
26  
27 U S WEST bears the burden of proving Section 271 compliance alone.

1  
2  
3 **IV. CONCLUSION.**

4 For the reasons noted above, the Commission should deny U S WEST's motion to  
5 reconsider.

6 DATED this 30th day of April, 1999.

7 GALLAGHER & KENNEDY, P.A.

8  
9 

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16 Original and ten (10) copies of the foregoing  
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18 Copy of the foregoing hand-delivered  
19 this 30<sup>th</sup> day of April, 1999, to:

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